

SENATE FINANCE COMMITTEE

March 29, 2013

9:08 a.m.

9:08:00 AM

CALL TO ORDER

Co-Chair Meyer called the Senate Finance Committee meeting to order at 9:08 a.m.

MEMBERS PRESENT

Senator Pete Kelly, Co-Chair
Senator Kevin Meyer, Co-Chair
Senator Anna Fairclough, Vice-Chair
Senator Click Bishop
Senator Mike Dunleavy
Senator Lyman Hoffman
Senator Donny Olson

MEMBERS ABSENT

None

ALSO PRESENT

Senator John Coghill; Chad Hutchison, Staff, Senator John Coghill; William Streur, Commissioner, Department of Health and Social Services; Stacy Kraly, Assistant Attorney General, Department of Law.

PRESENT VIA TELECONFERENCE

Doctor John Thorp, Physician, University of North Carolina;
Doctor Jean Bramer, Physician, Fairbanks.

SUMMARY

SB 49 MEDICAID PAYMENT FOR ABORTIONS; TERMS

SB 49 was HEARD and HELD in committee for further consideration.

#sb49

SENATE BILL NO. 49

"An Act defining 'medically necessary abortion' for purposes of making payments under the state Medicaid program."

9:09:42 AM

SENATOR JOHN COGHILL, introduced SB 49, and referred to the Sponsor Statement (copy on file).

Senate Bill 49 specifically brings clarity to the term "medically necessary abortion" for the purposes of making payments under Medicaid. In 2001, the Alaska Supreme Court determined the state must pay for medically necessary abortions for participants in the Medicaid program. Since 2001, the term "medically necessary abortion" has acquired a constitutional component of unknown scope. The relatively few Alaska cases involving abortion rights do not provide guidance as to how broadly the term "medically necessary abortion" is to be construed. SB 49 answers that issue. SB 49, based on recommendations and expert testimony from medical professionals, reasonably provides a neutral definition for a "medically necessary abortion." I urge you to support SB 49.

Senator Coghill stated that the Judiciary Committee had some testifiers who identified what would be "medically necessary." He stated that the Supreme Court had determined that medical terms through conversations with medical professionals on both sides of the question. The conversations with medical professionals resulted in the Judiciary Committee drafting a list that would satisfy both the Supreme Court and what would be "good medically necessary criteria." He shared that the neutral criteria was also examined from a legal perspective. He felt that the bill described what would be considered "medically necessary", but it still provided the doctors the trust to make proper decisions. He stressed that the bill's purpose was to define the physical criteria for the life, health, and wellbeing of the mother. He remarked that the bill did not restrict abortions; but outlined the reasons that the State of Alaska would pay for the abortion. He felt that the Judiciary Committee conducted a very thorough review of the testimony from all sides of the argument. He stated that the Judiciary Committee held six hearings, and approximately 60 people testified on the bill. He shared that the last section of the bill highlighted "serious risk

to the life or physical health, includes, but not limited to the serious risk to the pregnancy of the woman." He stated that the bill gave the doctor the discretion, but outlined to the patient what would be considered "medically necessary."

9:15:51 AM

Senator Coghill referred to the provision, commonly known as the Hyde Amendment, which dealt with rape and incest. He stated that the State of Alaska paid for abortions that were the result of rape or incest. He did not know of any State of Alaska funded abortions, based on the Hyde Amendment criteria. He stated that for ten years there were no Hyde Amendment funded abortions in the state. He felt that the bill outlined an adequate framework of what would be considered "medically necessary", and considered all others "elective." He felt that the framework was necessary, so whoever paid for the abortion could clearly understand the criteria.

Co-Chair Meyer stressed that the focus of the meeting should be directed toward the financial implications.

CHAD HUTCHISON, STAFF, SENATOR JOHN COGHILL, shared a brief executive summary as to the federal foundation, and the terms that were used in the bill. He stated that the definition of "medically necessary" incorporated the statutory that was outlined in the Hyde Amendment. He looked at tab 4 of the "HB 49 Committee Binder" (copy on file). The Executive Order 13535, Section 1:

It is necessary to establish an adequate enforcement mechanism to ensure that Federal funds are not used for abortion services (except in cases of rape or incest, or when the life of the woman would be endangered), consistent with a longstanding Federal statutory restriction that is commonly known as the Hyde Amendment.

Mr. Hutchison remarked that SB 49 included provisions for rape, incest, or danger to the life of the mother. He encouraged the committee to read tab 7 for more information regarding the Hyde Amendment.

9:20:45 AM

Mr. Hutchison shared that the Alaska Constitution allowed for one extra layer of protection. He stated that the bill included provisions related to the physical health of the mother, which was more thorough than merely a life-threatening circumstance. He stressed that Medicaid did not fund elective procedures; therefore Medicaid shall not fund elective abortions. He stated that Medicaid funded medically necessary procedures; therefore Medicaid would not fund medically necessary abortions. He pointed out that the definition was so unclear, that he believed that elective and medically necessary procedures had been included in the previous definition. He stressed that SB 49 outlined a proper definition of what would be considered a medically necessary abortion. He looked at tab 4a, which provided some statistical context comparing other state's provisions to Alaska's current model. He pointed to the left column of page 2, which was a report from the Guttmacher Institute that listed 32 states, plus the District of Columbia that strictly followed the federal foundational platform of life endangerment, rape, and incest. He pointed out that seventeen states had a court order or voluntary provisions to allow state funds for all or most medically necessary abortions. He explained that Alaska had been court ordered to fund those procedures. The court order was based on the 2001 Planned Parenthood decision. He looked at tab 4c, page 16:

The State, having undertaken to provide health care for poor Alaskans, must adhere to neutral criteria in distributing that care. It may not deny medically necessary services to eligible individuals based on criteria unrelated to the purposes of the public health care program.

Mr. Hutchison looked at tab 8, and pointed out that of the 1,627 induced terminations in 2011, 623 were paid for with Medicaid funds. He shared that the percentage of Medicaid covered abortions in 2011 was 38.3 percent.

Mr. Hutchison looked at tab 9, page marked 114, table 3, "Percentage distribution of women having an abortion, by their most important reason for having an abortion, 2004 and 1987." He pointed out that less than 1 percent of women who terminated a pregnancy in 2004 claimed to be a victim of rape; and only 4 percent claimed to have a physical problem with their health. He stressed that there was a remarkable gap between the percentage of abortions

performed based on maintaining the physical health of the mother versus the percentage of abortions in Alaska that were covered by Medicaid. He felt that there were many elective procedures were covered by Medicaid under the current definition of medically necessary. He explained that SB 49 narrowed the definition of "medically necessary", which was based on neutral criteria directly related to the health care field. He was confident in the language of the bill, because it had been thoroughly vetted by both medical and legal experts.

9:27:25 AM

Senator Dunleavy looked at tab 4a, and wondered if South Dakota was violating the federal mandate. Mr. Hutchison replied that South Dakota was violating the federal mandate, but bill was not intended to violate federal provisions.

Senator Dunleavy wondered why Alaska could not use the same model as South Dakota. Mr. Hutchison replied that the 2001 court decision controlled the legal framework of the language of the bill.

Senator Dunleavy surmised that the language was not based on legislation; rather it was based on a court order. Mr. Hutchison agreed with that summation.

Senator Hoffman wondered how a second opinion from a doctor would be treated in the language of the bill. Senator Coghill replied that he expected that the question would be dealt with between the patient and the doctor. He furthered that he was not sure how Medicaid would treat that question, and felt that Commissioner Streur would provide further information.

Senator Hoffman surmised that a second opinion from a doctor based on the life and health of the mother would be welcome in determining if an abortion was considered "medically necessary."

Co-Chair Meyer wondered how many abortions were elective versus what would be considered "medically necessary." Senator Coghill shared that there were 1,629 abortions in 2011; and 38 percent were paid with Medicaid dollars. He stated that he extrapolated that less than 6 percent of those Medicaid covered abortions would be considered

"medically necessary." He stressed that the summation may not be accurate, because there could be a larger issue. He furthered that the Guttmacher Institute's research reflected that 50 percent of abortions were because of job related or convenience issues, which should be considered "elective abortions."

Mr. Hutchison looked at tab 8, which discussed the figures that the statistical analysis was based on. He clarified that the total number of abortions was 1,627 in 2011; and the number of abortions covered by Medicaid was 623 in 2011, which was 38.3 percent of all abortions in 2011.

[9:32:37 AM](#)

Co-Chair Meyer surmised that Medicaid money was mostly federal money. Senator Coghill responded that the Medicaid money was approximately 50 percent federal money and 50 percent state money, but varied year to year.

Co-Chair Kelly wondered if 0.5 percent of abortions were medically necessary or the result of rape and incest. Senator Coghill replied that tab 9, page 114 reflected those figures. He announced that 0.5 percent of abortions were the result of rape, and 4 percent of abortions were because of physical problems with the woman's health.

Co-Chair Kelly anticipated that 4.5 percent would be a reasonable number to use as a determination of a reasonable number of people that would be obtaining medically necessary abortions to be paid for with Medicaid dollars.

Senator Dunleavy wondered if federal funds would be the only Medicaid dollars that would be used for abortions, if the legislation passed. Senator Coghill responded that the Medicaid dollar was a federal and state partnership.

Vice-Chair Fairclough wondered how a doctor would determine how the abortion would be medically necessary. Senator Coghill responded that there was a list of qualifications that doctors would use to determine what would be considered "medically necessary."

[9:37:39 AM](#)

Vice-Chair Fairclough looked at tab 4b, and wondered if Alaska provided counseling to those that were victims of

rape and incest, and wondered if that assault would be reported to the Department of Public Safety (DPS). She pointed out that advocacy groups felt that sexual assaults were underreported to DPS. Senator Coghill replied that the doctors would report the assaults in cases where they were required to report. He furthered that he was not sure exactly how the sexual assaults would be reported. He understood the issue regarding who decides payment under rate, and he also understood who and how the assault would be reported.

Vice-Chair Fairclough pointed out that victims of rape and incest sometimes did not choose to report the crime. She stressed that many of those victims that may become pregnant were faced with a decision that would affect the rest of their lives. She remarked that many of those victims were not willing to undergo counseling, because of the issue of disclosure. She wondered if the rape victims were protected under the Health Insurance Portability and Accountability Act (HIPAA), because if the crime was reported, the state was obligated to prosecute the offense. She stressed that the victim may be faced with a public documentation of what they may have wanted to remain private. Senator Coghill replied that "abortion in cases of rape and incest" and "medically necessary abortions" were two different issues. He remarked that the court mandate for rape and incest was already in place.

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Vice-Chair Fairclough supported the provision of abortion in cases of rape and incest. She felt that the issue may need to be addressed in the bill. She looked at tab 8, and noted the ages of the people who were seeking medical services

Vice-Chair Fairclough looked at tab 8, and felt that abortions under age 24 were a substantial number in the state. She felt that those numbers might increase, and rape statistics may also increase, because the pregnant women may say they were raped in order to obtain an abortion. Senator Coghill responded that there was an informed consent portion of the bill, so Vice-Chair Fairclough's concerns may be directly related to the informed consent portion of the bill. He stressed that the doctors would have that conversation with the individual who was seeking an abortion. He remarked that the payment method and

information that was delivered in order to receive assistance were two different matters. He pointed out that that issue had undergone significant litigation.

Vice-Chair Fairclough would like to hear from the Department of Law (DOL) about the consequence of reporting that the abortion was obtained because of a rape or incest scenario.

Mr. Hutchison remarked that the inclusion of rape and incest had been a part of Alaska law ever since the Hyde Amendment was enacted. He felt that the rape and incest numbers had not changed from less than 0.5 percent since 1987.

Senator Coghill furthered that there may be a greater problem with rape and incest in Alaska than what was reflected in the data. He understood Vice-Chair Fairclough's concerns, and agreed to work on that issue. He felt that the current bill's agenda may not be appropriate, but understood the severity of the problem of rape and incest reporting in Alaska.

Vice-Chair Fairclough felt that the individuals who report to be victims of rape should be treated with respect; that their lives should remain private; and the state does not subject those individuals to scrutiny that they may have chosen not to participate in. Senator Coghill responded that her concern was a legal issue that may have many aspects.

[9:47:52 AM](#)

Co-Chair Kelly felt that Vice-Chair Fairclough's concerns were beyond the scope of the bill. Senator Coghill stressed that the bill was focused on when it was appropriate for Medicaid to cover the cost of an abortion.

Co-Chair Meyer wondered if the pregnant women had access to counseling that provided information about adoption. Senator Coghill responded that pregnant women had access to that kind of counseling, but he felt that there needed to be counseling that provided information about adoption. He furthered that there was an informed consent provision in Alaska law that endeavored to provide women with the counseling options about effects of abortion and adoption options. He explained that 76 percent of women who undergo

and induced pregnancy termination do not request a copy of the informed consent. He furthered that he had pushed to require all women who underwent an induced pregnancy termination to receive informed consent, but the court ruled that women could only receive that information if they request it. He felt that was a problem.

9:52:00 AM

WILLIAM STREUR, COMMISSIONER, DEPARTMENT OF HEALTH AND SOCIAL SERVICES (DHSS), introduced himself.

Co-Chair Meyer requested information regarding the indeterminate fiscal note. He specifically queried the federal and state percentage share. Commissioner Streur responded that he did not know the exact Medicaid contribution percentage split between the state and federal governments.

Senator Dunleavy wondered if it was possible to use separate the state and federal fund accounting, based on what the Medicaid money was used toward. Commissioner Streur replied that it was not possible to separate the state and federal fund accounting.

Senator Dunleavy wondered if it were possible to only dedicate federal money to abortion, within a separate accounting process within Alaska's Medicaid system. Commissioner Streur replied in the negative, because the federal government would only pay their portion of Medicaid for the cost of Hyde covered medically necessary abortions.

9:56:38 AM

Vice-Chair Fairclough felt that the discussion was not a pro-life versus pro-choice discussion. She requested a copy of the certification form that the doctors use in order to determine whether or not the abortion is considered medically necessary. Commissioner Streur responded that the form submitted to DHSS was a certification from the doctor. The certification included abortion due to rape or incest; health of the mother; or state general fund only stating that the abortion was not an elective procedure, but based on the doctor's professional opinion determined that the health of the mother was in danger due to the impact of the pregnancy. This certification was the only way a doctor

could be reimbursed. He stressed that the mother's non-notarized statement was not submitted to DHSS.

Vice-Chair Fairclough wondered if the patient's name was confidential. Commissioner Streur replied that the patient's name and identification number were included in the form.

Co-Chair Meyer noted that the state's share for abortion procedures totaled \$191,000. He queried the cost of an individual abortion procedure. Commissioner Streur agreed to provide that information.

Senator Olson shared that he had done that \$191,000 divided by 623 paid, was \$307 per abortion procedure.

Senator Dunleavy wondered if the Medicaid determination process was different as a result of the Hyde amendment court action. Commissioner Streur responded that he did not understand the question.

Senator Dunleavy wondered how the recent court decision changed the structure of how abortions would be paid for by Medicaid. Commissioner Streur responded that the supreme court decision resulted in an expansion of the coverage for abortions in the state of Alaska.

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RECONVENED

[10:04:16 AM](#)

DOCTOR JOHN THORP, PHYSICIAN, UNIVERSITY OF NORTH CAROLINA (via teleconference), shared that he helped Senator Coghill helped define "medically necessary abortion" in the drafting of the bill. He felt that the list was adequate in determining what was "medically necessary."

DOCTOR JEAN BRAMER, PHYSICIAN, FAIRBANKS (via teleconference), felt that the bill was of fiscal concern. She shared that patients were allowed to seek a second opinion, even when covered by Medicaid.

Vice-Chair Fairclough wondered if she had ever filled out a certification form that specifically listed rape or incest. Doctor Bramer responded that she did not perform abortions. She furthered that she had participated in an abortion as a resident. It was an extreme case where the patient had a severe heart condition, so she had a 50 percent or higher chance of dying during the pregnancy.

Co-Chair Meyer wondered if a second opinion would be paid for by Medicaid. Doctor Bramer responded that the second opinion would be covered by Medicaid.

Co-Chair Meyer felt that there were some questions that should be addressed by the DOL.

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RECONVENED

STACY KRALY, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, introduced herself. She shared a response regarding information obtained by a doctor regarding rape or incest. She stated that there were two different components: requirements pertaining to adults and requirements pertaining to minors. She stated that there was no reporting requirement for an adult. That information was confidential. She furthered that physicians were mandatory reporters when it was determined that a minor was pregnant by an adult who was trusted to care for that minor. She stated that there would be no mandatory reporting requirement, if the perpetrator was not entrusted to care for the minor.

Co-Chair Meyer discussed housekeeping.

SB 49 was HEARD and HELD in committee for further consideration.

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ADJOURNMENT

1:47:32 PM

The meeting was adjourned at 1:47 p.m.

